IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICITON

WRIT PETITION NO. 956 OF 2007

Anupama Naik]
of Mumbai, Indian Inhabitant residing]
at B-202, Pascoal Square, Sunder Nagar,]
Santa Cruz East, Mumbai] ....Petitioner

VERSUS

1. The Standard Chartered Bank]
having its Mumbai Office at]
23-25, M.G. Road, Mumbai 400 001]

2. Mr. Francis Alphonso, Advocate]
having his office at 4/34, A/C. Market]
Tardeo, Mumbai 400 034]

3. Ms. Rita Joshi, Advocate]
having her office at 4/34, A/C. Market]
Tardeo, Mumbai 400 034] ....
Respondents

Ms. Shobha Gopal for the Petitioner

Mr. Ashok D. Shetty for the Respondents.

CORAM: SWATANTER KUMAR, C.J., & S.C. DHARMADHIKARI, J.
Judgment reserved on: June 7, 2007
Judgment pronounced on: June 21, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. On the statement of one Mr. Anand P. Patankar, on 6th May, 2005, Dadar Police Station registered F.I.R. No. 289 of 2005 under Section 360 of the Indian Penal Code. It was recorded that he was a retired employee, and had taken a debit card of the Standard Chartered Bank, Shivaji Park, Dadar, and was using the said card. After the expiry of the card, he received a letter from the bank that they are going to send another card. Somewhere on 23rd August, 2005, he received a letter along with Personal Identification Number (PIN) for the same card; and on 3rd September, 2005, as he needed money, he gave his daughter a cheque of Rs.5,000/- for withdrawing. In his statement, there are unauthorised withdrawals shown for different amounts, on 27th August, 2005, Rs.20,000/- and Rs.5,000/-; on 28th August, 2005, Rs.25,000/-; on 29th August, 2005, Rs.25,000/-; and on 30th August, 2005, Rs.25,000/-, totaling a sum of Rs.1,00,000/-, which had been withdrawn from the bank's ATM. According to him, the card

was stolen, which was lying on the dining table, and the amounts have been withdrawn without his permission and by some person. After conducting investigations, the property is said to be stolen. The charge-sheet was filed against the petitioner.

2. On 24th April, 2006, the petitioner was arrested for commission of the said offence under Section 380 of IPC and was granted bail.

3. The petitioner is employed with the Standard Chartered Bank since 15th February, 1988, and was working at Juhu Branch as a Teller. According to the petitioner, the informant is a long- standing friend, and on 26th August, 2005, she invited the informant to join her and family members for dinner at Flora Fountain. It was then agreed that on her way to Flora Fountain, the petitioner would pick the informant from his residence. Accordingly, the petitioner, her husband and two children dropped in at the informant's house on their way to

the dinner venue. The daughter of the informant, Ms. Pinaz Patankar, was also working in the Juhu Branch of the respondent-Bank as Line Manager, and she could persuade her father to withdraw the criminal case against the petitioner if the petitioner tendered her resignation from the bank. According to the petitioner, she was not involved in the alleged unauthorised withdrawals of money. The respondent-Bank instructed the petitioner to appear before a Disciplinary Committee on 8th May, 2006 at its office at M.G. Road, Mumbai. In the said meting, the threats of dismissal from service were given to the petitioner, but the petitioner did not bother by the threats given to her, and did not tender her resignation.

4. The petitioner then received a letter dated 17th May, 2006 from the respondent-Bank informing the petitioner that the informant had also informed the bank about the alleged theft of the card and unauthorised withdrawals and the involvement of the petitioner in the police case. On the basis

of the above, respondent No.1 called upon the petitioner to show cause why her services should not be terminated for loss of confidence vide their letter dated 17th May, 2006. The said letter is Exhibit 'A' to the writ petition. Vide her letter dated 30th May, 2006, the petitioner brought to the notice of respondent No. 1 that some of the enclosures reported to have been sent along with its letter dated 17th May, 2006 had not been received, and requested that complete documents may be given to her. Respondent No. 1, thereupon, furnished the documents to the notice in June, 2006; and the petitioner, as per her reply to the show-cause notice, gave the full facts, including that the show-cause notice was vague and the arrest of the petitioner by the police does not, *ipso facto*, establish her guilt and respondent No. 1 had no authority to terminate her services. She also informed the bank that continuation of departmental proceedings, when criminal proceedings were pending, would cause serious prejudice to her right of defence; and she would have to disclose her entire evidence which she is supposed to adduce during the

course of criminal trial before the Court of competent jurisdiction. After receipt of Exhibit 'F', the letter dated 7th June, 2006, the Senior Industrial Relations Manager of the bank issued a charge-sheet dated 23rd August, 2006 against the petitioner, and informed the petitioner that she has been suspended from employment, pending the departmental enquiry against her. To this charge-sheet, she submitted a reply, again taking the plea that primarily, the charge-sheet and the charge is based upon similar facts on which the petitioner has been held by the police and report under Section 173 of the Criminal Procedure Code and under Section 180 of the Indian Penal Code has been filed; and as such, the departmental proceedings should not continue. It was specifically stated that the Supreme Court has held that simultaneous progress of criminal proceedings and departmental inquiry are not permissible and as such, the bank should restrain itself from taking any proceedings. This request of the petitioner was not acceded to by the Senior Manager, Employee Relations, who vide his letter dated 27th

September, 2006, informed the petitioner that her reply to the charge-sheet was neither satisfactory nor acceptable to the bank; and that respondent No. 1 had decided to hold the departmental enquiry against her for commission of an alleged act of misconduct; and informed the petitioner that respondent No. 2 has been appointed as Inquiry Officer and respondent No. 3 as Management-Representative and she should submit documents to the Inquiry Officer. The departmental inquiry against the petitioner has commenced in terms of the charge-sheet (Exhibit 'G') despite her objection, which she reiterated before the Inquiry Officer as well on 6th October, 2006, 8th November, 2006, thereafter the inquiry was adjourned to 20th November, 2006 and it could not be held due to absence of either of the respondents. During the course of the inquiry on 13th March, 2007, respondent No. 3 offered her reply to the objections of the petitioner stating that both the proceedings should continue and there was no prohibition in law to stop the said departmental proceedings against the petitioner. On 23rd March, 2007, the inquiry was

again adjourned, as the defence representative could not attend the inquiry. The same has been adjourned from time to time, and nothing material has happened in the departmental inquiry so far. The petitioner gave her objections, which have not been accepted by the respondents, resulting in filing of the present writ petition.

5. The respondents have not raised any dispute to the facts of the present case, and they have raised legal submissions that there is no law which prohibits an employer to carry on with the departmental proceedings against an employee in the event criminal proceedings are also initiated against the employee on similar facts. According to the respondents, the bank has a legal right to continue with the departmental proceedings, inasmuch as there is loss of confidence between the employer and the employee and the criminal trial is likely to take long time before the same is finally concluded. The FIR was lodged in the year 2005, and even charge has not been framed in the Court as yet.

6. The above factual matrix of the case shows that a very narrow legal controversy arises for consideration of the Court in the present case; and that is whether in the facts of the case, the Court should restrain or permit the continuation of departmental proceedings during the pendency of the criminal trial, which is stated to be on somewhat similar facts. Before dealing with this controversy in relation to the facts of the present case, we may usefully refer to certain judgments and principle of law relating to the matter in controversy.

7. In the case of *Darshan Kumar Gupta v. Punjab National Bank* (CWP No. 8796 of 2001), a Division Bench of the Punjab High Court answered this question, after discussing the law, as follows:-

> "Whether as a matter of rule, there ought to be deferment of conclusion of departmental proceedings till pronouncement of judgment by the Court of competent jurisdiction in a criminal-trial, where the delinquent claims similarity in articles of charges and the charge framed in criminal proceedings? is the question that arises for consideration before us in this writ petition.

The Petitioner was working as Assistant Manager in Saidoke Branch of the Punjab National Bank. Upon registration of FIR No. 3 of 2000 dated 4.10.2000, the petitioner was arrested by the State Vigilance Department of the State of Punjab on 4.10.2000. Vide order dated 30.10.2000, petitioner was placed under suspension as a result of his arrest in a criminal case. The respondent Bank served a charge-sheet upon him containing different articles of Charges accompanied by memorandum of allegations on 16.4.2001. Enquiry officer was appointed vide order dated 7.6.2001. In furtherance to registration of the F.I.R., the investigating agency filed the challan and a charge was framed against the petitioner by the Court of competent jurisdiction.

The contention of the petitioner is that the charge framed by the criminal Court and the Articles of charges served upon the petitioner are based upon common premises and in the event of departmental proceedings continuing, the petitioner would suffer a serious prejudice in his defence before the criminal Court the foundation of both the charges being the same. While relying upon the judgment of the Supreme Court in the case of M.Paul Anthony Versus Bharat Gold Mines Ltd., 1999 (2) RSJ 318 and Jatnu Ram Versus State of Haryana, 1999 (3) RSJ 134, the petitioner prays for stay of departmental proceedings till the conclusion of the criminal trial.

Vide order dated 4.7.2001 a Division Bench of this Court had granted interim exparte stay of departmental proceedings. The respondents filed an application for vacation of the stay order under Article 226(3) of the Constitution of India. The reply affidavit was also filed. Written Statement was also filed along with stay application. According to the respondents, the writ petition was liable to be rejected as the petitioner had

not approached the Court with clean hands. The charge-sheet dated 16.4.2001 is stated to be different and distinct from the charge framed against the petitioner under Sections 17 and 13(2) of the Prevention of Corruption Act, 1988. It is specifically pleaded that the scope of the enquiry and investigation is distinct and different in the facts and circumstances of the present case. The petitioner was caught red handed while accepting the bribe. As pleaded by the respondents, the petitioner used to demand money from various customers for advancement of loans. The specific incident related to 3.10.2000 when documents of loan were got executed. Despite sanction of the loan, the cash orders were not delivered to persons, which were seized on 4.10.2000 upon arrest of the petitioner.

As this question arises more than often in various cases before the Court, we consider it appropriate to discuss the law enunciated by different judgments in regard to such matters. Thus, it would be appropriate to examine the legal aspect of the case before we proceed to discuss the merits of the contentions raised in view of the peculiar facts and circumstances of this case.

We have no hesitation in answering the proposition at the very outset of the judgment in the negative. It is neither practicable nor possible to accept the contention of the petitioner as a matter of absolute proposition of law. General principles which emerge from various pronouncements of the Hon'ble Apex Court definitely indicate that there cannot be a strait jacket formula for deciding the controversy of the present kind. Where there is no specific bar for simultaneous progress of the departmental enquiry and the criminal trial, there the exceptions have also been carved out to the rule. There could be cases where the departmental enquiry and the criminal trial are not only based on identical facts, but are so intermingled that their simultaneous progress could

cause serious prejudice to the right of defence of the delinquent. Unless the evidence to be led in support of articles of charges in disciplinary proceedings and in criminal trial are so intricate and difficult and require proper technical or legal appreciation for their final determination, no fruitful purpose can be served by stalling departmental proceedings which are much simpler in their nature and do not require strict adherence to rule of evidence.

The distinction between the departmental enquiry and criminal trial is distinctively accepted and is not a fine one so as to normally cause over-lapping of proceedings and evidence. Initiation of criminal proceedings *per se* is not a bar to concurrent and continuation of disciplinary proceedings on somewhat similar facts. In certain cases, the Supreme Court has even sustained the argument of the department that departmental proceedings could continue even after the delinquent is acquitted by a criminal Court of such charge. In light of these principles we would now refer to specific judgments to provide clarity to the point of view we propose to take in the present case. A Division Bench of this Court in a very recent judgment in the case of Shri Birbal Versus Haryana State Electricity Board and others, CWP No. 15171 of 2002, decided on 26.09.2002 held as under:-

> 'It is settled principle of law that the departmental proceedings in all the cases cannot be stayed till the conclusion of the proceedings before the criminal court merely on the ground the articles of charges and charges before the criminal court have the similarities. It will have to be decided keeping in view the facts and circumstances of each case.

At this stage, it may be relevant to refer to the view expressed by the Hon'ble Apex Court in various cases relating to desirability of continuation of disciplinary proceedings despite criminal charge having been filed against the delinquent official. The Hon'ble Supreme Court in the case of Delhi Cloth and General Mills Ltd. v. Kushal Bhan A.I.R. 1960 Supreme Court 806 held as under:-

'Though very often employers stay enquiries into the misconduct of the employees pending the decision of the criminal trial courts dealing with the same facts and that is fair, it cannot be said that principles of natural justice require that an employer must wait for the decision, at least of the criminal trial court, before taking action against an employee.'

Further reference can be made to the case of Jang Bhadur Singh V. Baij Nath Tewari reported as A.I.R. 1969 S.C. 30.

The above view was reiterated with approval and with further extended limits of desirability of continuation of disciplinary proceedings even after being absolved or otherwise by the Hon'ble Supreme Court in the case of State of Punjab & Anr. v. Dalbir Singh & Ors. J.T. 2000 (10) S.C. 456, where the court held as under:-

'The question that arises for consideration, therefore, is whether the levy of penalty under the provisions of Motor Vehicles Act would absolve the concerned employee from all liabilities and would debar the disciplinary authority to initiate disciplinary proceedings. In other words, the question would be whether initiation of a departmental proceedings would tantamount to violation of provision contained in Article 20 (2) of the Constitution. Having examined the relevant facts involved in these

appeals and having examined the judgment of the Full Bench of Punjab and Haryana High Court, we have no hesitation to come to the conclusion that the Full Bench rightly interfered with the judgment of the Division Bench of Punjab and Haryana High Court. In our view, the payment of penalty under the provisions of Motor Vehicles Act would not absolve the employee fully from all other liabilities nor would it debar the employer from initiating a departmental proceedings for the alleged misconduct of the concerned delinquent employee. Such initiation of a departmental proceedings by no stretch of imagination, can be held to be a violation of provision of Article 20 of the Constitution of India.'

Similar view was expressed a Division Bench of this Court in R.N. Yadav, Accountant Sugar Mills, Shahabad Markanda, Haryana v. State of Haryana and others, 1997 (2) SCT 332.

Another Division Bench of this Court in the case of Som Prakash Wadhawan vs. The Uttari Haryana Bijli Vitran Nigam and others decided on 12.4.2002, where the Court held as under:-

'It is a well settled rule of law that the scope, effect and consequences of the criminal and departmental proceedings are distinct and different. One necessarily may not determine the fate of the other. Once the employer has a reasonable suspicion on its employee for a serious offence like demanding and accepting illegal gratification, to prevent the department from taking recourse to conclusion of the proceedings, merely because the criminal proceedings have also been initiated against the official by the police / State Vigilance Department, would neither be just nor fair. The burden to show serious prejudice to his rights is

upon the delinquent officer / official. The learned counsel for the petitioner has not been able to show as to what prejudice the petitioner is likely to suffer if both the proceedings continue.

The rules governing a criminal trial are so stringent that a delinquent officer as an accused may get benefit of doubt and resultant acquittal, but that necessarily may not entitle him clearance in the departmental enquiry. The department would be well within its right to conduct an enquiry and pass appropriate orders in accordance with law. In the present case the evidence of the petitioner has still to start and it is not certain as to when the criminal proceedings pending before the Court of competent jurisdiction would attain finality. To keep the departmental proceedings in abeyance for such an indefinite period even otherwise would not be in consonance with the settled canons of service jurisprudence.

The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of the disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of course but a considered decision. Even if stayed at one stage, the decision may require reconsideration if the criminal case gets unduly delayed.'

It also must be noticed that there is no rule which on its plain reading or on the principle of “necessary implication” can be construed as a bar for continuation of the two proceedings simultaneously. Thus, unless it is demonstratively shown that the petitioner would be exposed to grave prejudice and the proceedings are so intermingled that one cannot continue de-hors the other it may not be appropriate

for the Court to stay the continuation of departmental proceedings till conclusion of the criminal proceedings. In this regard reference can also be made to a judgment of the Calcutta High Court and a Division Bench judgment of Rajasthan High Court respectively in the cases of Basudev Mitra, 1994(5) S.L.R. 401 and Laxman Lal Versus State of Rajasthan, 1994 (5) S.L.R. 120. (Reference State of Rajasthan Versus Shri B.K. Meena and others, JT 1996 (8) S.C. 684 = AIR 1997 S.C. 13).'

In addition to the above judgments, reference to some other judgments of the Apex Court which have a direct bearing on the matter in issue would be proper. In the case of State of Rajasthan Versus B.K. Meena and others, AIR 1997 Supreme Court 13, it was held as under:-

'It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be desirable, advisable or appropriate to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is 'that the defence of the employee in the criminal case may not be prejudiced'. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of facts and law. In our respectful opinion, it means that not

only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, advisability, desirability or propriety, as the case may be, has to be determined in each case taking into consideration all the facts and circumstances of the case.

'The interest of the delinquent officer also lies in a prompt conclusion of the disciplinary proceedings. If he is not guilty of the charges, his honour should be vindicated at the earliest possible moment and if he is guilty, he should be dealt with promptly according to law. It is not also in the interest of administration that persons accused of serious misdemeanour should be continued in office indefinitely, i.e. for long periods awaiting the result of criminal proceedings. It is not in the interest of administration. It only serves the interest of the guilty and dishonest. While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long period pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be a matter of course.'

In the case of Capt.M.Paul Anthony Versus Bharat Gold Mines Ltd. and another, 1999 (2) RSJ 318, the Hon'ble Apex Court held as under:-

'These decisions indicate that though it would not be wrong in conducting two parallel proceedings, one by way of disciplinary action and the other in the criminal court, still it would be desirable to stay the domestic inquiry if the incident giving rise to a

charge framed against the employees in a domestic inquiry is being tried in a criminal court.'

In the case of Corporation of the City of Nagpur, Civil Lines, Nagpur and another vs. Ramchandra and others, 1981 (2) S.L.R. 274, it was held as under:-

'Normally where the accused is acquitted honourably and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its discretion in any way fettered.'

In the case of Jang Bahadur Singh Versus Baij Nath Tiwari, AIR 1969 Supreme Court 30, the Hon'ble Supreme Court held as under:-

'The issue in the disciplinary proceedings is whether the employee is guilty of the charges on which it is proposed to take action against him. The same issue may arise for decision in a civil or criminal proceeding pending in a court. But the pendency of the court proceedings does not bar the taking of disciplinary action. The civil or criminal court has no such power. The initiation and continuation of disciplinary proceedings in good faith is not calculated to obstruct or interfere with the course of justice in the pending court proceeding.'

Upon analysing the application of principles enunciated by the Hon'ble Apex Court, a Division Bench of this Court in the case of Sarita Kumari and others versus The Punjab State Electricity Board, Patiala and others, 1995 (1) P.L.R. 495 spelled out the conditions which need to

be satisfied before the Court could grant stay of departmental proceedings because of pendency of criminal trial of the delinquent official. The Court held as under:-

> 'It is true that Court may not be able to evolve any hard and fast rule or formula on the basis of which stay of departmental proceedings can or cannot be granted in cases of simultaneous invocation of remedies by an employer. Equally true is the position of law that emerges from various other pronouncements including the judgments referred to supra that there can be no legal bar for simultaneous proceedings being taken against delinquent employee i.e. disciplinary as well as criminal action. Thus, we feel that it may be appropriate to satisfy certain basic conditions or criteria which the Courts may consider while dealing with the cases specially of the present nature. These are intended to be general guiding factors and are not exhaustive. Thus, the Courts may have to consider the existence of the following conditions in their right perspective to determine and decide whether the stay may or may not be granted in a given case:-
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> i) The criminal action and the disciplinary proceedings are grounded upon the same set of facts;
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> ii) Identical and or similar questions arise for determination before the criminal Court of competent jurisdiction and the disciplinary / enquiring authority;
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> iii) The complexity of the merits of the case, that is to say, the case is of grave nature and involves questions of fact or law which are not simple and

normally should be decided by a Court of law alone; and

iv) Whether it will be unfair to the delinquent employee to permit continuation of simultaneous proceedings because it would prejudicially affect the case of the said employee, or the delinquent employee would face serious prejudice in his criminal trial because of continuation of disciplinary proceedings.'

In the case of Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya etc., AIR 1997 Supreme Court 2232 in a case where criminal proceedings under Section 304-A and 338 IPC were pending against the delinquent, the departmental enquiry on the basis that the delinquent official failed to anticipate accident and prevention thereof, were permitted to continue despite criminal proceedings. Similar view was also taken by the Calcutta High Court in the case of Bhaskar Mondal Versus UCO Bank and others, 2002(4) SLR 601 after discussing judgments of the Apex Court at some length.

In a recent judgment the Hon'ble Apex Court has also taken the view that even (if) the proceedings before the civil Court and/or the criminal Court are based on the same cause of action, the proceedings before both should be permitted to continue simultaneously as it is not necessary that findings arrived at by the civil Court shall be binding over the criminal Court. They would also not supersede the findings recorded by the others. This view was taken in the case of K.G. Premshanker Versus Inspector of Police and another, JT 2002(7) S.C. 30 and it was held that the view expressed by the Apex Court in the case of *V.M. Shah v. State of Maharashtra and anr.* JT 1995 (6) SC 433 is not the correct view. It is indicative of the fact that continuation of proceedings founded on

common cause necessarily need not lead to an inevitable result of staying one during the pendency of the other. This view can be appropriately applied to the proceedings before the criminal and departmental proceedings on the principle of ratio decidendi. Therefore, it may not be appropriate to hold as a principle of law that the departmental proceedings ought to be stayed if on somewhat similar facts or cause criminal proceedings were initiated before the competent Court of jurisdiction against the delinquent officer. It is a settled principle of law that the ambit, scope and consequences of these two proceedings are entirely distinct and different. On the analysis of the afore-stated principle it could fairly be stated that stay of departmental proceedings on the ground of pendency of criminal proceedings would not be a rule but an exception which could be applied only upon satisfaction of the afore-noticed conditions precedent.

Having answered the legal proposition as afore-noticed, now we proceed to discuss the merits of the present case on facts. In the present case the petitioner is facing criminal proceedings under Sections 7 and 13 (2) of the Prevention of Corruption Act, 1988 for demanding and accepting the bribe. The said proceedings are stated to be pending before the Court of competent jurisdiction. The department has served a charge-sheet upon the delinquent official .. The charges framed against the petitioner are of very general nature. The emphasis of the charge-sheet is that petitioner's activities have tarnished the image of the Bank by demanding and accepting bribe from the applicants / borrowers for sanctioning and disbursing loans in their favour. The charge refers to other transactions as well which are neither the basis nor even mentioned in the challan filed against the petitioner and the charge framed by the Court of competent jurisdiction. The criminal charge relates to demanding bribe from one Shri Amrik

Singh. In the statement of imputations supporting the charge-sheet, cases of Pawan Kumar and Baljinder Singh have also been mentioned from whom the petitioner demanded bribe of Rs.7500/- and Rs.3500/-.

It is evident from the above narrated facts that scope of the departmental proceedings is entirely different and distinct from that of the criminal proceedings in the present case. We are unable to see any prejudice to the right of defence of the petitioner before the criminal Court in the criminal proceedings as a result of continuation of the departmental proceedings. Both these proceedings are not based upon same set of facts. Similar questions do not arise for determination. There is no complexity in the merits of the respective cases, which are essentially inter-mingled. We are also unable to subscribe to the view that it would in any way be unfair not to permit departmental proceedings to continue during the pendency of criminal proceedings before the Court of competent jurisdiction. It appears to us that it will not be fair to stall the departmental proceedings during the pendency of the criminal proceedings as they will take considerable time in their conclusion particularly finally. The Bank cannot be compelled to pay to the delinquent officer for all this period despite the fact that as alleged, the petitioner has tarnished the image of the Bank and is prima facie blameworthy of serious misconduct. On the contrary, an appropriate direction should be issued to the Bank to conclude the departmental proceedings as expeditiously as possible and in any case not later than one year from the date of pronouncement of the judgment."

8. In the case of *ASI Sham Lal v. State of Haryana*, 2004 Vol. 1 Service Law Reporter 796, the Court also held as under:-

"Expeditious conclusion of departmental proceedings is in the interest of the employer as well as the employee. Pendency of these proceedings is more prejudicial to the service career of the delinquent employee. Unless seriously substantial and complicated questions of fact and law, based on identical facts, arise in the departmental and criminal proceedings, which require to be determined by the court of competent jurisdiction, it will not be appropriate to stay the departmental proceedings during pendency of the criminal trial as a matter of rule. In the present case as well, only charge has been framed against the accused and the departmental proceedings have been stayed by order of the court since November 2000. We are unable to appreciate who is the gainer in this state of affairs?

Certain enough, petitioner is a loser as he has been placed under suspension and presumably faces financial hardship. The petitioner is exposed to this stress now for last more than four years. Nothing has progressed on any front. We are informed that charge has been framed in the proceedings before the criminal court on 27.5.2003. The delayed conclusion of departmental proceedings can cause serious prejudice to the petitioner and, thus, its expeditious conclusion would mean the ends of justice. We are of the considered views that it will serve a greater purpose and benefit all concerned if the departmental proceedings themselves are concluded as expeditiously as possible so as to lift the sword of the threatened order of disciplinary proceedings hanging on the petitioner for a considerable period now. Thus, we direct that the departmental proceedings should be concluded within one year from the date a certified copy of this order is brought to the notice of the

concerned authorities. We hope, the petitioner shall fully cooperate in the departmental inquiry.

However, we are unable to appreciate what prejudice is likely to be caused to the petitioner as a result of continuation of departmental proceedings. Learned counsel for the petitioner has not been able to show what are the complicated questions of fact and law which require record based investigation or mode of proof before conclusion of the proceedings. In terms of law, mode of proof, onus, appreciation of evidence and effect of its conclusion are bound to be different and distinct in both these proceedings.

From the facts of the case it is clear that the evidence in the present case is neither so complex nor requires expertise to appreciate and decide the departmental proceedings. The scope of the departmental proceedings apparently is of a large dimension than the pending criminal proceedings against the petitioner. The scope of evidentiary value in the criminal proceedings or the departmental enquiry is distinct and different. We hardly see any reason to stay the departmental proceedings in the present case. We are of the opinion that no prejudice would be suffered or caused to the petitioner as he has already disclosed his defence in the present writ petition to the knowledge of the State itself. The case of the petitioner is of a false implication and that no proper procedure for trapping a public servant has been adhered to."

9. Still, another Bench of that Court in the case of *Kulwant Singh v. State of Haryana and Others* (Writ Petition No. 20502 of

2002 decided on 16th October, 2003), further added the following view:-

> "In view of the judgments mentioned above, the departmental proceedings and the trial for criminal offence do not stand on a same footing. In the criminal case, the prosecution is required to prove the charges against the accused beyond reasonable doubt whereas in departmental enquiry, the action can be taken on the basis of evidence which may not be strictly in accordance with the provisions of the Evidence Act but complies with the principles of natural justice. The acquittal in the criminal case is relevant for the limited purpose of sentence as held in K.G.Premshankar's case (supra). Therefore principle of stay of departmental proceedings during the pendency of criminal trial is that in appropriate cases of grave nature or cases involving questions of fact or law, departmental proceedings can be stayed so that the defence of the employee in the criminal case may not be prejudiced. The question whether an employee was ever prejudiced is a question to be decided in the facts of each case.
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> Therefore, in view of principles of law discussed above particularly by Hon'ble Supreme Court in *Capt M Paul Anthony's* case (supra), a Division Bench of this court in *Darshan Kumar Gupta* and *H.C. Inderjit* as also in *Prem Chand's* case (supra), the departmental proceedings against the petitioner in the present case are not required to be stayed.
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> In view of the principles of law laid down by the Supreme Court in *Capt M Paul Anthony*'s case (supra)

> above, the departmental proceedings against the petitioner in the present case are not required to be stayed.
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> In the criminal case, the petitioner has been charged of tampering with th matriculation certificate wherein the date of birth is alleged to have been changed from 15.9.1961 to 15.9.1964 whereas in the departmental proceedings the allegation is that he has committed fraud by showing less age and got himself enrolled in the police department with fraud. It is also alleged that he has removed pages from the village chowkidar's death and birth register with intention to conceal his date of birth.
>
> None of the principles discussed above are applicable to the facts of the present case which may warrant stay of the departmental proceedings pending criminal trial against him. Not only the allegations are distinct but the evidence shall also be separate. The facts are not complicated nor the petitioner shall be prejudiced by disclosing his defence in departmental proceedings..."

10. Now, we may also refer to the judgments relied upon by the learned counsel appearing for the parties before us. Arguing with some emphasis, the learned counsel appearing for the petitioner relied upon the observations made in the case of *Capt M Paul Anthony* to argue that the criminal proceedings need to be stayed wherever the employee is being tried by a criminal Court for an offence based on same facts. In that

case relatable to the peculiar facts of the case, Police and panch witnesses were to be examined in respect of rape committed at the house of an employee. The Court said: "It would be unjust, unfair and rather oppressive to allow the finding recorded at the *ex parte* departmental proceedings..." In the peculiar facts of the case, and the fact that after facing a trial for 14 years, the person was acquitted by the criminal Court, the Court held that criminal proceedings could not be instituted against the petitioner.

In the present case, even the charges have not been framed against the petitioner before the Court; and there has been some progress at least in the departmental inquiry which is being avoided by the petitioner on one pretext or the other and primarily, on account of that, the departmental proceedings must be abandoned.

11. Reliance was also placed on a recent judgment of the Supreme Court in the case of *NOIDA Entrepreneurs*

Association v. NOIDA & Ors., AIR 2007 S.C. 1161, where the Supreme Court stated that order of the State Government initiated the departmental proceedings against the delinquent pending inquiry by C.B.I., which was passed on the basis of the report of the Commission appointed by it on some points and that the administrative decision that the departmental inquiry was not required was set aside by the Supreme Court as untenable and liable to be quashed. In this very case, the Court clearly stated the principle that it was not possible to lay down any guideline as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in a criminal case against the delinquent officer. Each case would have to be decided on its own facts. The Court held as under:-

> "Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law."

12.We may also notice that in the case of *Suresh Chand v. Delhi Transport Corporation* [Writ Petition (Civil) No. 13122 of 2006 decided on 22nd November, 2006], a Single Bench of Delhi High Court held as under:-

> "9. The petitioner relied upon 2006(3) LLN 158 *M.V. Bijlani v. Union of India and others*, 2006 SCC(LandS) 1121, *G.M. Tank v. State of Gujarat and Ors*, *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and Another* 1999 LLR 499. I find that all these above judgements, relied upon by the petitioner, are all altogether on different footing and facts. The principles of law in respect of a domestic enquiry and criminal proceedings are well settled.
>
> 10. In *JM Tank*' *s*case (supra), the employee was honourably acquitted in criminal trial after recording of entire evidence. The evidence produced before the criminal trial and before the enquiry officer was similar. Under these circumstances, the Supreme Court has observed that findings given by the enquiry officer contrary to the one given by the criminal court in such cases, was unjust, unfair and oppressive. However, in the present case a perusal of order of the MM would show that the evidence of the prosecution was closed by the MM because no one appeared on behalf of the prosecution and the acquittal was recorded because of non production of evidence. The trial had concluded long after the incident while the enquiry was held immediately after the incident and concluded in short time. The entire evidence was recorded by the enquiry officer, while no evidence was produced before the

criminal trial. The findings of the criminal court were given on the basis of not recording evidence, which will not affect the result of enquiry.

11. In 2006(3) LLN 158 *M.V. Bijlani v. UOI* (supra), there was no charge against the delinquent about misappropriation of 4 KS of telegraphic cable wire. The charge was for non maintenance of ACE registers. The disciplinary authority proceeded against the mis-utilization of the amount of cable wires after receipt of the report from CBI (Anti Corruption Bureau). The Supreme Court observed that the appellant should have been charged for mis-utilization of the store he had handled if he was to be departmentally proceeded against on that basis. The Enquiry Officer proceeded as if in departmental enquiry, the appellant was charged with misappropriation of the property. The Supreme Court held that the evidence recorded by the enquiry officer and inference drawn by him were not commensurate with the charges and, therefore, allowed the appeal. The Supreme Court observed as under:

> 'It is true that the jurisdiction of the Court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e. beyond all reasonable doubts, we cannot lose sight of the fact that the enquiry officer performs a quasi judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of material on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot

> refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with. (para 25)' "

13.A Division Bench of High Court of Jammu and Kashmir in *Dr. Naseema Firdous and others v. State of J & K and others*, (2001) 1 J & K Law Reporter 280, observed as under:-

> "The courts should be careful, cautious and circumspect in staying departmental proceedings on the ground of pendency of criminal proceedings and/or trial. The purpose of the departmental enquiry and of criminal prosecution is completely different and distinct. The delinquent employees should not be allowed to stall, delay or obstruct the departmental proceedings unless they can establish that simultaneous continuation of both the proceedings would cause great detriment to them in the criminal trial. Pendency of proceedings in a criminal court should not be allowed to be used a shield to get rid of departmental proceedings. The process of the court should not be allowed to be abused by the delinquent employee to get the departmental proceedings stayed on flimsy grounds which are not relevant for considering the desirability or advisability of staying the departmental proceedings. The departmental

proceedings should not be stayed as a matter of course."

14. Thus, it is imperative for the Court to evolve legal solution in relation to the factual matrix of a given case and it is neither permissible nor prudentially correct to set a straight jacket formula, which will universally answer the question in the negative or affirmative. The law has to be applied to the facts of a given case. The principle of *ratio decidendi* also requires that the point decided in a case should be followed and applied to another case, provided the factual matrix has the ingredients of similarity. The departmental proceedings can be stayed where the articles of charge in criminal trial and basis of departmental inquiry are identical, the evidence is similar, it is so complex and a technical matter that the Court would be in a better position to determine the controversy, and the findings of the Court so recorded are bound to have adverse effect.

15.There is no accepted percept of law to support the contention that in every case, where a departmental inquiry and criminal charge are based on similar facts, the progress of the departmental inquiry essentially must be stayed till the conclusion of the criminal trial. This could lead to results which are not the intent of the theme of law. There can be cases where it may be appropriate to stay the departmental proceedings; but in such cases, the ingredients noticed in various judgments must be satisfied. Pendency of criminal proceedings initiated on somewhat similar facts by itself would not be a sufficient ground for staying the departmental proceedings. They are independent proceedings, which fall under different jurisdiction of various fora or courts. Unless the charges are so inter-mingled, and the evidence in support thereof is complex and technical, it may not be appropriate for the bank to continue the proceedings in the face of regular trial before the criminal Court. Loss of confidence may not be the cause which will squarely fall, in view of the well settled principles of law, in such category. Prejudice to

an employee is one of the factors which the Court would consider by heeding to such a request. Prejudice is not to be inferred. It is something which should be apparent on the record, and the delinquent should be able to demonstrate that prejudice likely to be suffered by him is to such an extent that judicial intervention would be essential. Whenever an employee is involved in corruption or any other case constituting criminal offence, commencement of the departmental proceedings is inevitable. If the submission of the petitioner is to be accepted, in all such cases, departmental proceedings should be stayed awaiting conclusion of criminal trial, which would mean that for years together, finality of criminal trial would not be there, unless and until final court's pronouncement of judgment upon guilt of the accused or otherwise. That does not appear to be the intent of the service jurisprudence or criminal law, in light of the above stated judicial dictum.

16. In the present case, the Bank had issued, firstly, notice to show case as to why the services of the petitioner be not terminated for loss of confidence. However, later on, the Bank took a decision to serve regular charge-sheet upon the petitioner. In the Memorandum of Misconduct, it is stated that besides the act of fraud and dishonesty, the acts of the petitioner were subversive of discipline, misbehaviour or in disregard to the customers. This charge-sheet was served upon the petitioner on 23rd August, 2006, whereupon the petitioner asked for time to file reply as well as for certain documents vide his letter dated 7th June, 2006. The only plea taken in the reply was denial of charges and for stay of departmental proceedings. Vide letter dated 27th September, 2006, departmental proceedings were commenced which have been adjourned primarily on the plea of the petitioner that the departmental proceedings are liable to be stayed; and particularly, on one occasion, when the Inquiry Officer was not present. Adjournments were also taken by the petitioner thereafter. The petitioner was placed under

suspension, and continues to be so till date. It will be neither just nor fair to stay the departmental proceedings merely because an FIR has been registered and charge-sheet has been filed in the Court of competent jurisdiction. Though the FIR was registered on 6th May, 2005, but till date, even charge has not been framed against the petitioner. Despite friendly relation of the petitioner with the complainant, the latter has still persisted with the action in law, which itself indicates that the plea of loss of confidence placed by the bank is not entirely baseless. The evidence in criminal case and onus of proof as well as the evidentiary value of the statement of witnesses and the methodology of trial would be totally different and distinct from that of the departmental inquiry. This is not a case like the ones relied upon by the petitioner wherein the employee was dismissed for having been convicted by a Court of competent jurisdiction and later was acquitted; and thus, was entitled to reinstatement. In the present case, criminal proceedings still have to commence and it is not necessary that acquittal, even if granted to the

petitioner, would automatically result in dropping of the departmental inquiry, inasmuch as the scope of the departmental inquiry is much wider and simpler in its form, scope and onus. As observed by the Supreme Court in *Capt. M Paul Anthony* (supra), the bank can always come to the conclusion as follows:

> "(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
>
> iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental

proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty, his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest".

17. Thus, we are of the considered view that it is not essential for this Court to stay the departmental proceedings till the conclusion of the criminal trial in the facts and circumstances of the present case.

18. Another objection raised on behalf of the respondents in the present case is that the present writ petition is not maintainable in view of the judgment of the Constitutional Bench of the Supreme Court in the case of *Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology and Ors.*, (2002) 5 SCC 111. The contention is that the bank is not carrying on any of the functions of the 'State', and, therefore, is not

under the control of the Government of India. The expression "other authorities", thus, would not take within its ambit the management of private bank and, therefore, the Writ Petition is liable to be dismissed on this short ground. The learned counsel also placed reliance on a decision of the Supreme Court in the case of *Federal Bank Ltd. vs Sagar Thomas and Ors*., (2003) 10 SCC 733, in this behalf.

19. However, the learned counsel appearing for the petitioner asserted that since the fundamental rights or protection available to the petitioner have been impinged upon by the respondents and there is every likelihood that the petitioner would suffer serious prejudice in her right of defence, this Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India, particularly when there is no bar preventing exercise of such power. Reliance is placed in support of this on the judgments of the Supreme Court in the case of (i) *K. Venkatachalam vs. A. Swamickan and another* [1999 (4) SCC 526] and (ii) *Fertilizer Corporation*

Kamgar Union Sindri and Others vs. Union of India and Others (AIR 1981 SC 344).

20. First, we are unable to understand as to which fundamental right of the petitioner is being violated. The departmental enquiry has still to progress as it is pending for recording of evidence and the petitioner has been taking adjournment after adjournment. No statutory rule has been brought to our notice by the learned counsel for the petitioner which, even in his submission, has been violated by the respondents. As already noticed, the respondents had issued a notice while proposing to dispense with the services of the petitioner by passing an order simpliciter, which was not pursued, and regular departmental enquiry in accordance with Rules has been commenced. It cannot also be disputed that the respondent-Bank is carrying on its normal business of banking entirely in a private field unaffected by any government policies being framed or controlled directly by the Government, except to the extent that the Bank is operating

in furtherance to the licence granted to it by the competent authority and in accordance with the restrictions imposed by the Reserve Bank of India which would *per se* not give status to a bank of being an instrumentality of the State or one of the "other authorities" within the meaning of Article 12 of the Constitution of India. In the case of *Federal Bank Ltd. vs. Sagar Thomas and Others* [2003 (10) SCC 733], a somewhat similar question in regard to the ambit and scope of the expression 'other authorities' appearing in Article 12 in relation to the Banking Company *i.e*. Federal Bank was considered by the Supreme Court and answered as under:-

> "26. A company registered under the Companies Act for the purposes of carrying on any trade or business is a private enterprise to earn livelihood and to make profits out of such activities. Banking is also a kind of profession and a commercial activity, the primary motive behind it can well be said to earn returns and profits. Since time immemorial, such activities have been carried on by individuals generally. It is a private affair of the company though the case of nationalised banks stands on a different footing. There may well be companies in which majority of the share capital may be contributed out of the State funds and in that view of the matter there may be more participation or dominant participation of

the State in managing the affairs of the company. But in the present case we are concerned with a banking company which has its own resources to raise its funds without any contribution or shareholding by the State. ...

27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all concerned including the private companies. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and control of Pollution) Act, 1974 etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to.

28. The six factors which have been enumerated in the case of *Ajay Hasia* and approved in the later decisions in the case of *Ramana* and the seven-Judge Bench in the case of *Pradeep Kumar Biswas* may be applied to the facts of the present case and see whether those tests

apply to the appellant Bank or not. As indicated earlier, share capital of the appellant Bank is not held at all by the Government nor is any financial assistance provided by the State, nothing to say which may meet almost the entire expenditure of the company. The third factor is also not answered since the appellant Bank does not enjoy any monopoly status nor can it be said to be an institution having State protection. So far as control over the affairs of the appellant Bank is concerned, they are managed by the Board of Directors elected by its shareholders. No governmental agency or officer is connected with the affairs of the appellant Bank nor is any one of them a member of the Board of Directors. In the normal functioning of the private banking company there is no participation or interference of the State or its authorities. The statutes have been framed regulating the financial and commercial activities so that the fiscal equilibrium may be kept maintained and not get disturbed by the malfunctioning of such companies or institutions involved in the business of banking. These are regulatory measures for the purpose of maintaining a healthy economic atmosphere in the country. Such regulatory measures are provided for other companies also as well as industries manufacturing goods of importance. Otherwise these are purely private commercial activities...."

21. The dictum of the Supreme Court in the case of *Federal Bank* (supra) puts the matter beyond controversy that against a Private Bank carrying on banking activities simpliciter and in absence of any violation of a statutory obligation, the writ

would not lie. The Supreme Court in the case of *Pradeep Kumar Biswas* vs. *Indian Institute of Chemical Biology and others* [2002 (5) SCC 111] elucidated the principles which would bring an instrumentality or other authorities within the ambit of the expression “State”. The fundamental conditions required to be satisfied by the authorities were functions, regulatory control, financial control and the object for which such an instrumentality or Corporation or other body was created. The distinction between an instrumentality or agency of a State and other authorities had to be kept in mind and authority must be an authority *sui juris* to fall within the meaning of expression “other authorities”. The Supreme Court held that CSIR in that case was to be covered under the said expression keeping in view the management and control entirely in the hands of the persons appointed by the Government in accordance with the Rules. There is nothing before us to show that regulatory function or management control is vested in the Board or body nominated and appointed by the Government and they were only carrying on

the private business of banking. In the present case as well, there is no material placed before the Court and, in fact, is not even the case of the petitioner that there has been violation of any statutory provisions. It cannot be said that an employee has a fundamental right to claim stay of departmental proceedings wherever on similar facts he is being prosecuted in accordance with the provisions of the Criminal Procedure Code. We are unable to accept the contention that in the facts of the present case, the writ would lie against the respondent-Bank.

22. In the result, the present writ petition is hereby dismissed, while leaving the parties to bear their own costs. However, we would hasten to issue direction to the respondents to ensure that the departmental proceedings are concluded expeditiously.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.